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**SOAH DOCKET NO. 473-21-2427
PUC DOCKET NO. 52081**

**APPLICATION OF EL PASO § BEFORE THE STATE OFFICE
ELECTRIC COMPANY TO ADJUST §
ITS ENERGY EFFICIENCY COST § OF
RECOVERY FACTOR AND §
ESTABLISH REVISED COST CAP § ADMINISTRATIVE HEARINGS**

COMMISSION STAFF'S INITIAL BRIEF

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
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COMMISSION STAFF’S INITIAL BRIEF

I. INTRODUCTION

El Paso Electric Company’s (EPE) application to adjust its energy efficiency cost recovery factor (EECRF) and request to establish a revised cost cap should be granted as filed. EPE’s application has substantially satisfied all applicable requirements under 16 Texas Administrative Code (TAC) § 25.182, and therefore should be approved as filed. The City of El Paso’s (City) assertion that EPE’s “bonus (before adjustment) be limited to the amount it would have otherwise been calculated under alternative avoided cost values”¹ is outside the scope of an EECRF proceeding, and thus, the proposed reduction to the resulting bonuses is not appropriate. In addition, the City’s request to entirely remove the FutureWise pilot market transformation program based on a lack of minutiae accounting for an education-based pilot program is an over interpretation of the requirements of 16 TAC § 25.181(e)(5).

A. Avoided Cost of Energy

Under 16 TAC § 25.182(e), a utility that exceeds its demand and energy reduction goals at a cost that does not exceed the cost caps established under 16 TAC § 25.182(d)(7) is entitled to a performance bonus. However, 16 TAC § 25.181(e)(2) provides that a utility that cannot reasonably operate its energy efficiency programs at the established cost caps may petition for a good cause exception to the rule and a higher EECRF cost cap.

¹ Direct Testimony of Karl J. Nalepa at 18 (July 19, 2021).

In its application, EPE projects that it will not reasonably be able to operate its energy efficiency programs and meet its energy and demand goals at the residential customer cost cap established under 16 TAC § 25.182(d)(7)(A) and the commercial customer cost cap established under 16 TAC § 25.182(d)(7)(B).² Accordingly, EPE's EECRF application includes a request for a good cause exception to the rule and permission to raise its residential and commercial customer cost cap for calendar year 2022.³

The City argues that the Commission should adjust EPE's avoided capacity costs when calculating the requested performance bonus because the avoided costs are not reasonable due to EPE being outside the Texas Reliability Entity and Electric Reliability Council of Texas (ERCOT).⁴ Adjusting EPE's avoided cost of energy is outside the scope of an EECRF proceeding. The process for establishing a utility's EECRF is governed by 16 TAC § 25.182, which does not contemplate a challenge to the avoided cost of energy used by a utility in its calculations. While 16 TAC § 25.181(d)(3)(A) provides a mechanism for challenging the ERCOT-calculated avoided cost of energy and 16 TAC § 25.181(d)(3)(B) provides that a utility in an area without customer choice may petition the Commission to use an alternative avoided cost of energy, both mechanisms contemplate action in a proceeding outside of a utility's EECRF.

EPE complied with all requirements when calculating its performance bonus and is not required to seek authorization to use a lower avoided cost of energy than other utilities in the state. EPE included a reduction to its bonus for exceeding its commercial cost caps in this docket using the method approved by the Commission in Docket No. 48332. Thus, EPE is requesting a performance bonus for 2020 that reflects a reduction because it exceeded its commercial cost cap in 2020.⁵ Because EPE did not petition the Commission for authorization to use an alternative

² Application at 3.

³ *Id.*

⁴ *Id.* at 12.

⁵ Application at 4.

avoided cost of energy, EPE is required to use the ERCOT-calculated alternative cost of energy in calculating its performance bonus.

Therefore, the City's request to adjust EPE's calculated bonuses is without merit and should be denied.

B. The FutureWise Pilot Market Transformation Program

The City argues in Mr. Nelepa's testimony that the FutureWise pilot market transformation program be entirely removed from EPE's application because the City was unable to verify that the requested \$300,000 was not spent on non-energy benefits.⁶ The Public Utility Regulatory Act (PURA) § 39.905(a)(5) establishes one of the acceptable energy efficiency goals as providing customers education materials on energy efficiency.

The FutureWise is a proposed pilot program for 2022. The proposed pilot program provides high school students with a kit that includes energy saving devices that will contribute to EPE's energy efficiency savings goals, as well as provide education materials.⁷ The program will also teach other skills such as being able to read a utility bill or knowing about green energy, which are part of behavior changes that result in savings. Such behavioral changes are allowed under 16 TAC § 25.181(e)(5).

Removing the FutureWise pilot market transformation program from EPE's EECRF would disincentivize utilities from testing novel programs to address energy efficiency education, which contributes to EPE's ability to meet its energy reduction goals. Therefore, EPE should be given the opportunity to explore different programing options, including the FutureWise pilot market transformation program, for addressing the energy efficiency goals established in PURA.

⁶ Direct Testimony of Karl J. Nalepa at 4 (July 19, 2021).

⁷ Direct Testimony of Crystal A. Enoch at 9 (May 3, 2021).

II. CONCLUSION

The City's proposed adjustments to EPE's application are without merit. EPE complied with all applicable requirements of 16 TAC § 25.182, and therefore, EPE's application should be approved as filed.

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on September 3, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Kourtnee Jinks _____
Kourtnee Jinks